
The United States District Court District of New Mexico has original subject matter jurisdiction of this civil action pursuant to 28 U.S.C. Section 1332(a) because there is complete diversity among all properly joined parties and the amount in controversy exceeds \$75,000.00

exclusive of interests and costs. Furthermore, under 28 U.S.C. § 1441(b), no Defendant in this action is a citizen of New Mexico, the state in which this action was filed.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On March 30, 2021, Plaintiff Mary Ann Rowan (“Plaintiff”) filed a Complaint in the State of New Mexico County of Bernalillo, Second Judicial District, entitled *Mary Ann Rowan v. Smith’s Food & Drug Centers, Inc., and John Doe*, No. D-202-CV-2021-02056 (the “State Court Action”). *See* Ex. A, State Court Action Docket Report; Ex. B, Pl. Compl.
2. On July 30, 2021, Service of Process was made upon Defendant Smith’s. *See* Ex. D, Summons Return (filed 8/21/21).
3. Defendant Smith’s is an Ohio Corporation with its principal place of business in Cincinnati, Ohio. Therefore, for purposes of diversity jurisdiction, Defendant Smith’s is a citizen of the State of Ohio. *See* 28 U.S.C. § 1332 (c)(1) (“[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business . . .”).
4. Plaintiff alleges personal injuries caused by a an alleged slip and fall incident at Smith’s store located at 200 Tramway NE, Albuquerque, New Mexico. Ex. B, Pl. Compl. at ¶¶ 3-8.

¹ Pursuant to 28 U.S.C.A. § 1441(b), “In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.” Accordingly, Defendant John Doe is disregarded and does not defeat diversity.

5. Plaintiff is a citizen of the State of New Mexico and resides in Cedar Crest, Bernalillo County, New Mexico. *See* Compl. ¶ 1.

II. REMOVAL IS PROPER BECAUSE THE COURT HAS JURISDICTION PURSUANT TO 28 U.S.C. Sections 1332 AND 1441

6. Removal is proper because this is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000 exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).
7. Plaintiff is a citizen of New Mexico and Defendant Smith's is a citizen of a different State other than New Mexico. Therefore, there is complete diversity of citizenship. *See* 28 U.S.C. §§ 1332 and 1441(b).
8. The amount in controversy requirement is satisfied for removal because Plaintiff seeks compensatory damages for past, present, and future damages, to include medical expenses, pain and suffering of a mental and physical nature, the inability to engage in normal family, social, or recreational activities, and loss of household services and activities. *See* Ex. B, Pl. Compl. ¶ 8 (setting forth Plaintiff's damages). Moreover, the amount in controversy requirement is satisfied for removal because pre-suit communications from Plaintiff's counsel indicate by the preponderance of evidence that the amount in controversy exceeds \$75,000.00. *See* 28 U.S.C. § 1332(a) and §§ 1446(c)(2)-(3). *See also* Ex. C, Pl. Court-Annexed Arbitration Certification (affirming that Plaintiff seeks "relief other than a money judgment and/or seeks relief in excess of twenty-five thousand dollars (\$25,000.00) exclusive of punitive damages, interest, costs, and attorney fees").

III. VENUE IS PROPER IN THE UNITED STATES DISTRICT COURT DISTRICT OF NEW MEXICO

9. Albuquerque, New Mexico (Bernalillo County) is located within the state of New Mexico, and venue for this action is proper in this Court because the United States District Court District of New Mexico is the “federal court serving the entire state of New Mexico.”² Moreover, the United States District Court District Court of New Mexico is the “district ... embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

IV. DEFENDANTS ARE IN COMPLIANCE WITH THE PROCEDURE FOR REMOVAL OF CIVIL ACTIONS PURSUANT TO 28 U.S.C. § 1446 AND D.N.M.LR-CIV 81.1

10. In compliance with 28 U.S.C. Section 1446 (a) and D.N.M.LR-Civ. 81.1, Defendant Smith’s files attached hereto or filed contemporaneously herewith a copy of all records and proceedings from the State Court Action. *See* Exs. A-D.
11. This Notice is filed with this Court within thirty (30) days of the service of this lawsuit on Defendant Smith’s and within one year of the commencement of this action. Therefore, this Notice of removal is timely pursuant to 28 U.S.C. Section 1446(b).
12. In compliance with 28 U.S.C. Section 1446(d), Defendant Smith’s will file or has contemporaneously filed and serve(d) a Notice of Filing of Removal, attaching a copy of this Notice of Removal with the Clerk in the State Court Action.

² *See* the United States District Court District of New Mexico website at <https://www.nmd.uscourts.gov/>, last visited August 30, 2021.

Defendant Smith's will also cause to be served by electronic means a copy of the Notice of Filing of Removal on counsel for Plaintiff.

WHEREFORE, Defendant Smith's Food & Drug Centers, Inc., respectfully removes this action from the State of New Mexico County of Bernalillo, Second Judicial District Court to the United States District Court District of New Mexico pursuant to 28 U.S.C. Sections 1332, 1441, and 1446.

Dated: August 30, 2021

O'BRIEN & PADILLA, P.C.

By: /s/ Erica R. Neff
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CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2021, the attached document was served via electronic means upon the following counsel of record:

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